IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.90 OF 2005

State of Maharashtra ... Applicant

versus

Santosh Hiraman Urankar & ors. ... Respondents

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Mr. A.S. Gadkari, A.P.P., for the State, Applicant.

Mr. S.P. Kadam i/by Mr. Milind Deshmukh, for Respondents Nos.1 to 4.

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CORAM : A.M.KHANWILKAR,J.

3rd March 2005

ORAL ORDER :

1. This application is for cancellation of anticipatory bail granted by the Sessions Judge, Raigad, Alibag, on 26th July 2004 in respect of offence punishable under section 306 read with section 34 of the Indian Penal Code registered with Panvel Town Police Station being CR.No. 234/2004. The Respondents have been named as

accused responsible for the death of Pradeep Dattatraya Bhoskar. The Respondents are closely related to the deceased. Respondent No. 4 is the wife of the deceased and Respondent No. 2 is the sister of Respondent No. 4. Respondent No. 3 is the mother of Respondent No. 4 and Respondent No.1 is the husband of Respondent No. 2 (brother-in-law of Respondent No. 4). The prosecution case, in brief, is as follows:

i) That one Ashalata Dattatraya Bhoskar (Complainant) of Panvel has two sons by names Pradeep and Dinesh. Smt. Ashalata is staying with her son Dinesh and his wife Sonal. As Pradeep got married to Respondent No. 4 Smt. Swati, they were staying separately at Disha Co-operative Society, Plot No. 59-62, B Wing, 3rd Floor, Room No. 302 New Panvel. Pradeep and Swati have a daughter by name Smruti.

ii) There were some differences of opinion between the deceased Pradeep and Swati (Respondent No.4) on the point as to in which school Smruti should be

admitted for her education. That on 16.5.2004, Respondent No. 2 & 3 went to the house of deceased Pradeep and took Respondent No. 4 and Miss Smruti with them. On the same day it was proposed to hold a meeting regarding admission of Smruti in the school.

iii) That the Complainant; Smt. Ashalata with her son Pradeep (deceased) went to attend the said meeting which took place at 8.00 p.m. in the house of Respondent No.1. Said meeting was attended on behalf of Respondent No. 4 by her sister the Respondent No. 2, Respondent No. 3, and others. After Pradeep and his mother went to the house of Respondent No. 1 Respondent No. 2 closed the doors and the Respondent No. 2 and 3 started abusing the deceased Pradeep and his mother i.e. the complainant. Respondent No. 1 started beating Pradeep. Complainant intervened and told the Respondent No. 1 not to beat Pradeep as Pradeep was operated six

months back on his backbone.

iv) That as soon as the complainant told the Respondents as aforesaid the Respondent No. 1 and 2 rushed towards the complainant Ashalata. The Respondent No. 2, 3 and 4 started abusing the complainant Ashalata in the name of her married daughter Manisha Jadhav. It was said that they would bring Manisha to Panvel and compel her to work as prostitute. There was no discussion regarding the admission of Smruti and the complainant and Pradeep came back to their house. Thereafter, it is alleged that Respondent No. 4 wrote a letter amongst other demanding that the house situated at Sector No. 9 of New Panvel should be transferred in her name. Besides, the Respondent No. 4 asked her husband (Pradeep) to assure that no other family member except him should visit their house.

v) That on 10/6/2004 deceased Pradeep

received a phone call from Respondent No. 4 wherein the Respondent No. 4 told Pradeep that she would not come back to his house even her feet are touched by any person from his family and further Respondent No. 4 abused Pradeep and suggested him to go and die.

vi) That on 11/6/2004, it was found that Pradeep has committed suicide by hanging himself to the ceiling fan in his flat. The writing of Pradeep which was found in the said flat discloses that the Respondents are rich persons and the Respondent No. 1 is a goonda by nature and even if complaint is made to the police no purpose would be served. That the said chit was seized from the scene of offence. That the said suicide note was a carbon copy and the original writing till date could not be recovered and the Investigating Agency is suspecting that the said writing is with the Respondents.

The mother of deceased Pradeep lodged complaint with the police on 13th June 2004, which is registered as CR.No. 234/2004. Immediately on the next day, the Respondents moved the Sessions Court for anticipatory bail. The Sessions Court granted interim protection to the Respondents on 14th June 2004. The application has been finally disposed of on 26th July 2004.

2. The Sessions Court in its order mainly took the view that custodial interrogation of the Respondents was not necessary as relevant material, which would indicate complicity of the Respondents was already seized by the Police. He further observed that there are no criminal antecedents against the Respondents. Moreover, they are permanent residents of New Panvel. Lastly, the learned Judge observed that insofar as the apprehension of the prosecution regarding the Respondents tampering the prosecution evidence is concerned, that can be taken care of by imposing strict conditions. These are the only reasons which have weighed with the learned Judge to pass the following order, which is impugned in this application.

"The order of interim anticipatory bail granted on 14/6/2004 is hereby confirmed.

The Applicants are directed to report to Panvel Town Police Station twice in a week i.e. on every Monday and Thursday between 11.00 a.m. to 2.00 p.m. till charge sheet is filed.

The applicants are directed not to make any inducement, threats or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer."

3. The present application for cancellation of bail has been filed by the State on 7th January 2005. In the first place, it is asserted that the basis on which the lower Court proceeded to grant anticipatory bail to the Respondents, having regard to the seriousness of the offence and material to indicate the complicity of the Respondents, cannot be sustained. In other

words, the order passed by the lower Court is challenged on merits. In addition, it is asserted that the Respondents have violated the conditions on which anticipatory bail was granted in their favour. Neither they have reported to the concerned police station at any point of time after the order was passed, though that was one of the conditions, nor have they abided by the condition to dissuade the prosecution witnesses from giving evidence. Specific instance has been mentioned in the application and letter addressed by the Respondent No. 1 to one Ramchandra Balu Urankar has been placed on record. It is the case of the prosecution that Respondent No.1 is a politically influential person in the area and taking advantage of that position, he is trying to influence the prosecution witnesses. After notice of this application was served on the Respondents, it is now stated on affidavit on behalf of the State that thereafter the Respondents have tried to further influence the prosecution witnesses. In fact, about 7 false complaints have been registered against the prosecution witnesses. Besides, in the reply, which has been filed by the Respondents before

this Court, false accusation has been made against the police officers, which fact has not only been denied in the rejoinder filed by the State, but the relevant circumstances are also explained in the affidavit. On the above basis, it is urged that the order of anticipatory bail granted in favour of the Respondents ought to be cancelled.

4. This application is resisted by the Respondents. The Respondents have justified the order passed by the lower Court on merits. According to them, all relevant factors have been taken into account by the learned Judge in allowing the application for anticipatory bail, for the reasons recorded in the order. Besides, reply has been filed denying that they have failed to comply with the conditions imposed in the order passed by the lower Court. According to them, they were attending the concerned Police Station, but no record has been maintained in the police station and taking advantage of that position, false allegations are made about non-compliance of the condition. It is the case of the Respondents that they have been regularly

visiting the concerned police station, but they were not aware that they were required to maintain diary to take acknowledgement of the concerned police officer relating to the visits made by them. To support the fact that the Respondents were not only visiting the police station in compliance of the order passed by the lower Court, but the Respondent No. 1 was required to visit police station also in respect other cases, reliance is placed on document at Exhibit R-2 (page 69) dated 30th June 2004 which pertains to criminal complaint lodged in respect of Rahul Dipak Bhende. Besides, it is contended that the residence of the Respondents is just near the Police Station, about 200 ft. away from the police station. On this basis, it is contended that the allegation that the Respondents have violated the condition of attendance cannot be entertained. Insofar as violating the condition regarding dissuading the prosecution witnesses is concerned, it is asserted on affidavit that the Respondents have not resorted to any means, which would tend to influence the prosecution witnesses in any manner. It is the case of the Respondents that

the Respondents are being falsely implicated out of political rivalry and other disputes with the prosecution witnesses. In addition, it is alleged in the affidavit filed by the Respondents that Police Constable Bhole was demanding huge amount from the Respondents, so as to protect them from the present proceedings pending before this Court. Accordingly, the Respondents prayed that the application as filed by the State is devoid of merits and the same be dismissed. Counsel for the Respondents has placed reliance on the decision of the Apex Court reported in 2004 ALL MR (Cri) 2498 (SC) in the case of Raj Kumar Jain & anr. v. Kundan Jain & anr; and another decision of this Court in the case of B.S.Rawat, Assistant Collector of Customs, Bombay v. Leidomann Heinrich and another, reported in 1991 Cri.L.J. 552.

5. Having considered the rival submissions and perusing the record of the case, I have no hesitation in taking the view that the order as passed by the Court below cannot be sustained on facts and in law. Insofar as the merits is concerned, the prime reason that has weighed with

the learned Judge of the lower Court, is that, custodial interrogation of the Respondents was not necessary, as the material which would indicate complicity of the Respondents is already seized by the police. This reason by itself cannot be the basis to grant anticipatory bail. For, Section 438 of the Code of Criminal Procedure, as applicable to State of Maharashtra, obligates the Court to bear in mind the nature and gravity or seriousness of the offence. Accordingly, the Court was obliged to consider other aspects including the seriousness of the offence and that there was material to indicate the complicity of the Respondents and further that the investigation had just commenced with the recording of the complaint on 13th June 2004; whereas interim protection was granted on the very next day; Although there was sufficient material to indicate the involvement of the Respondents, amongst others, the suicide note and the diary of the deceased left behind. The suicide note graphically describes the background in which the deceased was confronted and pressurised by the Respondents and that he was apprehensive of the Respondents, because the

Respondent No.1 was influential and had already succeeded in getting acquittal in a criminal case which was launched against him for offence under section 302 of the Indian Penal Code. The suicide note refers to the fact that Respondent No.1 had told the deceased that he has already digested one murder case and there is no difficulty in taking care of the deceased, if need arises. If such was the state of affairs, which drove the deceased to commit suicide as noted in the suicide note and the diary, it is obvious that there was material to indicate the complicity of the Respondents, in particular of Respondent No. 1. With such material on record, the Court below ought not to have granted anticipatory bail to the Respondents when the investigation was at a nascent stage. Moreover, fair investigation of such a serious offence cannot be effectively done without custodial interrogation.

6. The other reason which has weighed with the learned Judge is that there are no criminal antecedents against the Respondents. Once again, that, by itself, cannot be a ground for granting

anticipatory bail. Even if there were no criminal antecedents, but if there was sufficient material to indicate complicity of the Respondents on record in relation to a serious offence such as the present one, that could be ground to reject the prayer for anticipatory bail. In the present case, although no criminal case is pending against the Respondents, but it is on record that the Respondent No. 1 was tried for an offence punishable under section 302, Indian Penal Code, though later on acquitted.

7. Similarly, the fact that the Respondents were permanent residents of New Panvel, by itself, will be of no avail. However, these are the reasons which have weighed with the lower Court to grant anticipatory bail to the Respondents. It is seen from the penultimate paragraph of the order in question that the prosecution had expressed apprehension that the Respondents would tamper with the prosecution evidence. The learned Judge, however, observed that that can be taken care of by imposing strict conditions. The learned Judge clearly overlooked the fact that Respondent No. 1 was politically

influential person in that area and his background, including involvement in murder case in the past, though resulted in acquittal, ought to have been reckoned while considering the apprehension expressed by the prosecution. In other words, the order passed by the lower Court cannot be sustained on merits. Surely, it was not a case for grant of anticipatory bail.

8. To get over this position, learned Counsel for the Respondents placed reliance on the decision of the Apex Court in the case of Raj Kumar Jain (supra) to contend that at this distance of time, this Court ought not to interfere. I see no basis to entertain this submission. The observations of the Apex Court in Raj Kumar Jain's case (supra) are in the fact situation of that case. The Court found that the accused had regularly reported to the police every day and complied with all the conditions. That is not the case on hand to which I shall presently advert. Accordingly, this judgment will be of no avail to the Respondents.

9. That takes me to the grievance of the

prosecution that assuming that anticipatory bail has been justly granted to the Respondents, but the same cannot be continued in favour of the Respondents for having violated the conditions stipulated therein. It is the case of the prosecution that neither the Respondents have attended the police station on a single day as per the order, but further they have dissuaded the prosecution witnesses from giving evidence. To support the plea that the Respondents have not reported to the police station, that fact is not only stated on affidavit by the Sub-Inspector of Police, but is also supported by the entries in the police case diary. To get over this position, learned Counsel for the Respondents would contend that the necessity of complying with the conditions imposed by the lower Court would arise only when the police, in the first place, decided to cause arrest of the Respondents and that has not happened in this case. To support this position, reliance was placed on the decision of our High Court in the case of B.S. Rawat (supra). There is no substance in this submission. The argument is ill-advised. Even if the Police did not insist for formal arrest of

the Respondents, that would not absolve the Respondents of their obligation to attend or report to the police station in terms of the order - as the order clearly required that the Respondents to report to the concerned police station twice in a week on every Monday and Thursday between the specific period till the filing of the charge sheet. That condition is independent of the condition requiring release of the Respondents on executing bond and furnishing security in the event of arrest. The exposition in the case of B.S.Rawat (supra), which is pressed into service, in my opinion, are of no avail to the Respondents. The observations in the said decision are misread by the Counsel for the Respondents. On the other hand, the learned A.P.P. has rightly pressed into service decision of our High Court reported in 1992 Cri.L.J. 2349 in the case of Assistant Collector of Customs (P), Bombay v. Madam Ayabo Atenda Ciadipo Orisan and another which had occasion to consider the reported decision in the case of B.S.Rawat (supra) relied upon by the Respondents. In paras 8 and 9 of the said decision, the Court has considered the purport of section 439(2) of the

Cr.P.C. Similar argument was canvassed in that case which, however, has been rejected. The Court has observed that if such argument was to be accepted, it would amount to grafting on a clause to the Section which does not exist in it and it would amount to narrowing down the scope of that section which is something that is impermissible having regard to the principles of law that govern the interpretation of statutes.

10. To get over this position, the learned Counsel for the Respondents argued that the Respondents were regularly attending the Police Station;, but since no diary was maintained in the police station nor they were aware that the Respondents had to maintain diary for their visits made to the police station, the prosecution is taking undue advantage of that position. This submission does not commend to me. The fact that the Respondents have not visited the police station inspite of the order, is not only stated on affidavit by the Sub-Inspector of Police of the concerned police station, but also supported by the entries in the police case diary produced on record. Whereas,

the stand of the Respondents is only on the basis of an unsubstantiated statement on oath. The Respondents are taking excuse of their ignorance regarding requirement to maintain diary regarding the visits made by them to the police station. That excuse cannot be accepted. Rather only to be stated to be rejected. The fact that the Respondents have not attended the concerned police station in terms of the order by itself can be a ground for cancellation of anticipatory bail. To get over this position, the Respondents contend that their residence is just near the police station. The fact that the residence of the Respondents is just near the police station will be of no avail. Because of the order, the Respondents were obliged to report to the police station. That has not happened in the present case. There is no reason why the stand of the State, which is supported on affidavit and taken by an independent person of the rank of Sub-Inspector of Police, ought not to be accepted. Counsel for the Respondents then vehemently contended that the Respondent No. 1 was visiting police station in connection with other offence registered with that police

station. Reliance was placed on the document at page 69 Exhibit R-2 to support this stand. However, this submission clearly overlooks that the document is dated 30th June 2004, whereas, the order of anticipatory bail is passed on 26th July 2004. The question of compliance of the condition will arise only thereafter. The fact that the Respondent No. 1 visited police station on 30th June 2004 will be of no assistance. Moreover, that fact does not establish that the Respondent No. 1 in particular and all other Respondents in general have strictly complied with the condition imposed in the order dated 26th July 2004, or, for that matter, have substantially complied with that condition. Accordingly, the argument that the Respondents have complied with the condition requiring them to attend the concerned police station will have to be answered against the Respondents and that by itself can be a ground for cancellation of anticipatory bail operating in favour of the Respondents.

11. Besides, I find substance in the allegation made on behalf of the prosecution that

the Respondents have attempted to influence the prosecution witnesses. To support this position, letter issued by the Respondent No. 1 addressed to Ramchandra Balu Urankar has been placed on record. This letter has been sent subsequent to the order releasing the Respondents on anticipatory bail. Besides, in the further affidavit filed on behalf of the State, it has come on record that the Respondents have tried to pressurise the prosecution witnesses after institution of the present application for cancellation of bail and upon service of notice thereof on the Respondents. The Respondents have gone to the extent of making false accusation against the prosecution witnesses by lodging seven criminal complaints against them after institution of this application for cancellation of bail. They have, in their affidavits filed before this Court, also made false accusation against the police constable, so as to create confusion and seek sympathy of this Court. There is no reason to accept the plea of the Respondents that Constable Bhole had demanded any amount from the Respondents to go slow on the present application. That stand is only an

argument in desperation. By no stretch of imagination, the police constable can make any impact on the proceedings, which are already before the Court. The proceedings have been initiated on the affidavit of the Sub-Inspector of Police of the concerned police station. There is no allegation made against the said Sub-Inspector of Police. In my opinion, the stand taken on behalf of the Respondents is nothing but an attempt to seek sympathy and confuse the matter. This has been done sheerly out of desperation.

12. The fact that the Respondents are out to see that they are not required to suffer arrest is also indicative from their conduct mentioned hereafter. That the Respondents were directed to remain present at the time of hearing of this application and passing of the order, as observed in my order dated 28th February 2005; and pursuant thereto they did appear at the time of hearing of the application on 1st March 2005, but the matter was required to be adjourned as Counsel appearing for the parties prayed for time to examine certain aspects which were relevant

for the consideration of the present application. The matter was accordingly adjourned to 2nd March 2005. The presence of the Respondents at the hearing of the present application was directed on the anology of requirement of Section 438(4) of the Code as applicable to the State of Maharashtra; for, the present application is continuation of the action under section 438 of the Code. The Respondents, however, failed to appear on that date presumably taking clue from the deliberations which took place in Court on the 1st of March 2005. The fact that the Respondents were absent came to the notice of the Court only when after hearing both Counsel at length and before the Court proceeded to pronounce the order, the Counsel for the Respondents was asked whether the Respondents are present in the Court, at that time, it transpired that the Respondents have not appeared in the Court inspite of knowledge that the matter was to proceed on 2nd March 2005. Obviously, the Respondents have been ill-advised to commit such blunder. Looking to the conduct of the Respondents, this Court thought it appropriate to issue direction to the Investigating Officer to

cause production of the Respondents before the Court on 3rd March 2005, so that the final order can be pronounced in their presence and appropriate directions can be issued. However, today, when the matter was called out, the learned A.P.P. informs that all the Respondents are absconding and untraceable. Report of the concerned police station to support this position is tendered, which is taken on record. In other words, the Respondents have attempted to over-reach the authority of this Court, which cannot be countenanced.

13. In my opinion, taking overall view of the matter, this is not a case for showing any indulgence to the Respondents, especially having regard to the seriousness of the offence and the conduct of the Respondents ever since the order was passed by the lower Court in their favour and even during the pendency of this application right till the final order was pronounced today on this application.

14. Hence, this application succeeds. The anticipatory bail order granted in favour of the

Respondents by the lower Court is set aside and cancelled with direction to the concerned police station to proceed against the Respondents forthwith in accordance with law.

(A.M.KHANWILKAR,J.)